DRN-3201933

The complaint

Mr H complains about the advice given by Grove Pension Solutions Limited ('GPS') to transfer the benefits he held in a defined benefit ('DB') occupational pension scheme to a personal pension. Mr H believes the advice was unsuitable for him.

What happened

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including decoupling the British Steel Pension Scheme ('BSPS') - the employers' DB scheme - from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement. The BSPS closed to further contributions in March 2017.

I understand that Mr H elected to transfer his benefits to the BSPS2, when he was required to make a choice about this in late 2017.

Mr H obtained a transfer value quotation ('TVQ') in respect of his BSPS2 benefits on 3 July 2019. This summarised the benefits Mr H was entitled to under the scheme at that point. It also gave the cash equivalent transfer value ('CETV') of Mr H's pension benefits, which was £128,791.28.

Mr H completed an enquiry form on 15 July 2019, asking GPS for advice about his pension. The form also provided GPS authority to gather information about his pensions. I understand though that Mr H's investment adviser, which I'll refer to as 'Firm J', recommended that he speak to GPS and introduced him.

GPS completed a fact-find to gather information about Mr H's circumstances and objectives. It noted that he was 32, in good health and employed full time. Mr H was married but separated from his partner and he had four dependent children.

In addition to the benefits Mr H held in the BSPS2, he was also a member of his employer's defined contribution pension scheme – set up when the restructuring consultation began. He and his employer were making combined contributions to this pension equivalent to 16% of his salary. And at the time of speaking to GPS, the value of this fund was estimated to be around £15,000.

It was recorded that Mr H hoped to fully retire by age 60 but may want to take pension benefits earlier - from age 55 or 57. It was also noted that he expected to need an income of £15,000 per year in retirement and didn't have a need for a lump sum before retirement. GPS noted that Mr H wanted the flexibility to invest his funds how he chose and to take the benefits under his control. It said that although the BSPS2 had only recently been established, Mr H was concerned by rumours about its status and the BSPS2 potentially being sold to a life company.

GPS also asked Mr H to answer questions about his attitude to risk. In the hand-written version of this questionnaire, it was recorded that he had very little investment experience or knowledge. In relation to general risk, Mr H was recorded as being 'intermediate' – sometimes erring on the side of caution but sometimes being willing to take risks. In respect of investment risk the option ticked for Mr H was 'cautious' but willing to invest in the stock market. In the typed version GPS has provided however, the answer in relation to investment risk was amended to 'medium'. GPS appears to have based its advice on Mr H's attitude to investment risk being 'medium', given this is what the suitability report referenced.

GPS completed a pension transfer analysis report on 22 August 2019. This included the calculation of a transfer value comparator ('TVC') - a measure of what sum of money Mr H would need at the point of the advice, to invest at a risk-free return, to provide equivalent benefits to the DB scheme at retirement. The report said Mr H would need £321,000. The report also said GPS had calculated the critical yield - the annual rate of return required of a new pension to allow Mr H to purchase equivalent benefits to those he was guaranteed under the BSPS2 at retirement. The critical yield calculated was based on Mr H retiring at age 65 and taking the maximum possible tax-free cash on retirement and was 4.5%.

GPS says it had a conversation with Mr H on 16 September 2019 in which it recommended that he proceed with a transfer of his pension benefits. A written summary of this advice was provided on 19 September 2019.

The recommendation letter summarised that GPS advised Mr H to transfer his pension benefits into a personal pension and invest in a specific portfolio with the recommended provider. It said that Mr H wanted to transfer his pension and rely on investment returns to provide his retirement provisions rather than the guarantees given by the existing scheme because he felt he could maximise his returns this way. It also said he had concerns about the scheme due to the past issues with the BSPS and he didn't feel he'd in fact have much reliance on the BSPS2 benefits, given he was a member of a new DC scheme and intended to contribute to this until retirement. It also noted he was keen for flexibility – to control his income in retirement and retire early – to maximise tax free cash and to improve the death benefits available before retirement. Based on this, Mr H's 'medium' attitude to risk and GPS' analysis, which it felt supported that Mr H could be better off as a result of transferring, it said it believed a transfer was suitable. The report noted that GPS and Firm J would be paid a fee for the transfer advice and that Firm J would provide ongoing servicing of the pension.

Mr H complained about the suitability of the transfer advice in 2021 as he was concerned it may've been unsuitable.

GPS didn't uphold Mr H's complaint. It said it felt the advice it had provided satisfied the requirements of what the regulator, the Financial Conduct Authority ('FCA'), indicated customers should expect. It said that Mr H had wanted to transfer so that he had the flexibility to access his pension before the normal scheme retirement age of 65, to have control over his investment, to improve and maximise his retirement benefits and to provide his family greater protection in the event of his death through access to a lump sum. GPS said its calculations suggested Mr H had the potential to be better off by transferring. And a personal pension met his other aims. So, if still felt the recommendation was suitable.

Mr H referred his complaint to our service. An Investigator upheld the complaint and said GPS should compensate Mr H for any loss the DB transfer had led to. He didn't think Mr H was likely to be better off as a result of transferring, certainly not without taking more risk than he would've been comfortable with. And the Investigator didn't think Mr H had any other genuine need which meant that the transfer was in his best interests. Based on this the Investigator said, if Mr H hadn't been given unsuitable advice, he thought he would've kept his benefits where they were – and said he thought he'd have remained in the BSPS and moved with it to the PPF.

GPS disagreed. It said the Investigator was mistaken about the options available to Mr H – noting he had already moved to the BSPS2 as part of the "time to choose" exercise. So, remaining in the BSPS and moving to the PPF wasn't an option and he had only been able to choose between remaining in the BSPS2 or transferring. GPS said it believed a comparison of the critical yield and discount rate, when looking at whether the transfer was financially viable was inappropriate and flawed. But regardless of this, it believed the rates referenced in the Investigator's analysis indicated Mr H could in fact expect to outperform the critical yield. It also said there was no requirement for it to calculate what the critical yield would be if Mr H did not take tax-free cash or if he retired early. And GPS said it still believed the advice was appropriate based on Mr H's circumstances and needs as well as the requirements of the regulator.

GPS also provided analysis by an external consultancy firm. It gave its opinion on the merits of GPS' advice as well as providing various projections and models, carried out in 2022 when it was instructed, to support its conclusions. In short, the consultancy firm thought the transfer allowed Mr H to meet his objectives, such as retiring early, and was viable because the CETV was considered generous. It also said had Mr H not transferred he'd have needed to make substantial additional contributions to his other pension arrangements to meet his retirement objectives, which it said was the cost to Mr H of retaining his defined benefits.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision. They have though acknowledged that GPS was correct that remaining in the BSPS and transferring with it to the PPF at the time of the advice was provided was not an option for Mr H. And have clarified that they think, if suitable advice had been given, Mr H would've remained in the BSPS2.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've been provided detailed arguments and a significant amount of documentation to consider by Mr H and GPS. And I'd like to reassure both parties that I've carefully considered all the evidence provided. If I don't comment on or refer to everything I've been sent or that either party have said this isn't meant as a discourtesy or because I haven't thought about it. Rather, it is because my decision will address what I consider to be the key issues in deciding what is fair and reasonable.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of GPS' actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GPS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

The primary purpose of a pension is to provide for the pension holders retirement – by way of an income. How the income that the pension holder could expect to receive after transferring compared to the guaranteed benefits they were due under their existing arrangements is, in my view, an important consideration as to whether they would be better off by transferring. Which in turn is important when determining if a transfer was in the pension holders' best interests. And indeed, the FCA required such a comparison and analysis to be undertaken.

GPS has said that the critical yield was not of much relevance at the time it gave advice – although it did still consider it – and that any analysis of this now is of limited relevance. But while I acknowledge that the TVC gave an alternative measure of the value of the benefits being given up, I still think an analysis of the critical yield is a relevant consideration here.

GPS has also questioned the Investigator's use of discount rates as a comparison to the critical yield – arguing it and the critical yield are for different purposes and any comparison is not appropriate as we aren't using the rates in the manner they were intended. It has also said it was under no obligation to consider the discount rate.

Discount rates were first used during the pension review in loss assessment calculations - to discount the cost of replacing the DB pension at retirement back to the date of a review taking place and redress being paid. Our service continued to publish discount rates until September 2017. After this the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. I acknowledge that GPS was not required to refer to the discount rate when giving advice. But it was free to do so. And although GPS does not agree, I think the discount rate is a reasonable additional consideration here. It provides a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

As the Investigator noted, GPS only calculated the critical yield (which it said was 4.5%) and TVC based on Mr H retiring at age 65 and taking the maximum possible TFC at retirement. GPS has said that maximising TFC was one of Mr H's objectives and that *"virtually every person who takes scheme benefits will take the TFC"*. But the fact-find recorded that Mr H didn't have a specific need for a lump sum in retirement. And I haven't seen anything else to support that maximising TFC was an objective Mr H identified. So, in the circumstances, I think it'd have been appropriate for GPS to provide Mr H the TVC and critical yield to purchase equivalent benefits to what he'd have been due if he took a full pension at age 65.

GPS also said that Mr H wanted to retire early. It says he wanted to do so fully at age 60 but might've done so even sooner – potentially from age 57. But there was also no TVC or critical yield calculated in respect of Mr H taking benefits early.

GPS says the TVC is to provide information about the performance required to match benefits at scheme retirement age. And that calculating it or the critical yield for early retirement is impractical. But GPS' advice was based on transferring being suitable for Mr H as it allowed him to meet his objectives – with early retirement being one of these. In order for him to make an informed decision, I'd argue a comparison to the benefits the BSPS2 would've provided through early retirement was entirely appropriate and ought to have been included. And that calculating the critical yield and TVC for this would be the most appropriate way to provide a like for like comparison. And contrary to what GPS has said, I don't think this was impractical. Indeed, in my experience, calculating equivalent critical yields and TVC's for early retirement seems to have been common industry practice when giving advice on pension transfers where early retirement was an objective.

Although GPS didn't calculate these alternative critical yields, the consultancy that it asked to review the sale did (although referring to them by a different name). It estimated that the critical yield required for Mr H to purchase equivalent benefits to those he'd have been due at age 65 under the DB scheme, if he took a full annual pension, was 5.11%. It also said the critical yield, if Mr H retired at age 57 and took a full pension was 5.81%. And if he retired at age 57 but took the maximum TFC available and a reduced pension, was 5.19%. Interestingly it also estimated the critical yield for the same scenario that GPS calculated at the time of the advice to be slightly different, 4.65% as opposed to the 4.5% GPS said. And while I acknowledge this information was not provided to Mr H at the time of the advice, as I've explained I think it would've been appropriate for it to have been calculated and shared. So, I've considered it here.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017. This was 4.7% for 32 years to retirement – which would be the case if Mr H retired at age 65. And was 4.6% for 24 years to retirement – the case if he were to retire at 57. I acknowledge that these discount rates are from almost two years prior to the advice having been given. But the share returns that were used to compile this discount rate wouldn't have likely been significantly different by the time of transfer and, if anything, the bond returns would have gotten lower. So, I think it still gives an approximate guide to the upper end of potential future returns. And I've also kept in mind that the regulator's projection rates had remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, the term to retirement and Mr H's attitude to risk.

Our Investigator said he thought Mr H's attitude to risk may have been more cautious than GPS suggested. But GPS didn't accept this. As I've mentioned I was provided with two copies of the "Personal and Financial Details" document (the fact-find) completed during the advice process. One was hand-written and one computer generated. In the hand-written version, signed by Mr H in July 2019, his attitude to investment risk was recorded as 'cautious'. In the computer-generated version, which is unsigned, this was amended to 'medium'. And the advice was based on Mr H having selected a 'medium' attitude to risk.

It isn't clear why that amendment to attitude to risk was made. And I've not been provided with any meeting notes, transcripts or other evidence that indicates Mr H agreed to this. So, I can see why the Investigator concluded that Mr H may've been less willing to take risk than GPS suggested. But ultimately, I don't think it makes a difference here.

There would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. And this appears to be the most likely scenario here – that at best, in one retirement scenario, he was likely to achieve largely the same benefits. It appears that Mr H was always likely to receive benefits of a lower overall value than the DB scheme at age 57 as a result of transferring – whether taking TFC or not. And likewise, he seems likely to have been unable to match the benefits offered by the DB scheme at age 65, if taking a full pension.

For taking TFC at age 65, it does seem more likely that the critical yield could've been achieved. So, the personal pension may have been able to match the benefits offered by DB scheme in that scenario. But this wasn't guaranteed and again there would be little point in introducing significant additional risk to achieve broadly the same benefits – which seems more likely than Mr H significantly exceeding the benefits he'd have been guaranteed under the DB scheme.

And the analysis of the transfer, carried out by GPS, includes an annual income comparison of what level of guaranteed income Mr H was likely to be able to purchase at maturity as a result of transferring, after charges and fees were accounted for and assuming a return of 5% was achieved and inflation of 2% accounted for. And this said Mr H's income was likely to be 7.4% lower annually.

The one TVC that was calculated also illustrates that it was likely to have been difficult to exceed the benefits available through the DB scheme – given it was calculated that a fund of £321,000 would need to be invested at a risk-free rate of return to purchase the same benefits. But the CETV available to Mr H was only £128,791.28. So, it would need to grow significantly, which would require exposing the fund to risk.

GPS says its analysis showed that if the regulators mid growth rate of 5% had been achieved, Mr H would've been able to draw an income equivalent to that the DB scheme would've provided on a flexible basis – leaving the remainder of the fund invested to continue to grow. And that if he did so his fund would've lasted until after his average life expectancy. And the consultancy firm it instructed provided calculations and models which it says supports this. But this was again based on simply matching what Mr H was already guaranteed under the DB scheme. And doing so was dependent on him taking investment risk he wasn't otherwise exposed to. It also required growth at the regulators middle projection rate to be consistently achieved. And if the investment performed at the lower level then Mr H would be worse off. If Mr H's investments suffered significant losses or a period of sustained poor performance, there was also the possibility that he would deplete his funds earlier than anticipated. Whereas the DB scheme benefit would last him for the rest of his life.

Taking everything into account, I don't think, based on what I've seen, that I can reasonably say Mr H was more likely than not to receive benefits of a greater value as a result of transferring. And so, from a financial viability point of view, I don't think a transfer was in his best interests.

Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits And GPS has suggested that the transfer achieved other objectives for Mr H, so was suitable. I've considered this below.

Flexibility

GPS says Mr H wanted flexibility to try to achieve his retirement objectives through growth. It also said he was intending to retire early, potentially at age 57 or earlier if possible, and wanted an income of £15,000 per year in retirement so needed flexibility to achieve this. And GPS said Mr H he wanted to maximise the amount of TFC he could take on retirement.

On wanting flexibility to try to achieve his retirement objectives through growth rather than his DB scheme benefits, I don't think this is something that would mean a transfer was in Mr H's interests. A pension is there to provide an income in retirement. And a guaranteed income is a valuable commodity. Transferring to achieve flexibility to invest would only make sense if there was a prospect of significantly improving the available benefits. And as I've already explained, I'm satisfied there wasn't here. So, even if this was something Mr H expressed an interest in, I think GPS should've advised him that transferring for this reason wasn't suitable.

In respect of early retirement, Mr H was 32 at the time of the advice. It was over 20 years until he could think about accessing his pension benefits at all and over 24 years until GPS says he intended to do so. I don't doubt he was interested in retiring early if possible – I think most consumers would be when asked. And he may even have tentatively planned to do so. But I don't think those plans were finalised and could've been subject to change, just as his circumstances and needs may have altered.

Mr H also had the option of taking his pension benefits early under his DB scheme. So, he didn't need to transfer in order to access his benefits from that age.

I also don't think Mr H needed to transfer in order to achieve his stated income goal. The suitability report had no meaningful explanation or comparison of the benefits available to Mr H under the DB scheme, either at age 65 or if he retired early. Given GPS says early retirement was a genuine objective, I think it should've done. The consultancy firm though did calculate the benefits the DB scheme would provide.

For retirement at age 65 it estimated the DB scheme would've provided an annual pension of £12,039 or TFC of £56,760 and a reduced annual pension of £8,514. The annual pensions would both continue to escalate while in payment. Both of these annual pensions would fall short of the target income of £15,000 per year until Mr H began receiving his state pension – although the TFC would be enough to supplement the annual pension and meet the stated need. But the DB scheme wasn't the only pension provision Mr H was likely to have by age 65. He was a member of his employers defined contribution pension scheme. And he and his employer were making combined contributions equivalent to 16% of his salary. This fund was already apparently worth £15,000 at the time of the advice. And I'm satisfied that, by age 65, this would've been enough to supplement the DB scheme and allow Mr H to meet his income goals until he began receiving his state pension.

Again, GPS says Mr H wanted to retire early. As I've said I don't think any definitive decision had been taken about this. But regardless of this, I still don't think he needed to transfer to meet his stated income goal. The consultancy firm estimated that at age 57 Mr H would've been entitled to a full annual pension of £8,198 per year or TFC of £40,011 and a reduced annual pension of £6,002 under his DB scheme. The annual pensions would again have continued to escalate in payment.

These annual amounts are a lot farther from the stated income goal of £15,000 per year. But as I've mentioned, Mr H was contributing to another pension. And based on the information recorded in the fact-find, before even accounting for increases in salary, investment growth or Mr H increasing his contributions, by age 57 this fund was likely to be worth in excess of £135,000. This fund could've also potentially been used flexibly from age 57, to supplement the income from the DB scheme. And I think this would've allowed him to meet his income objectives if he did retire at age 57 until his state pension became payable. At which point the state pension and the DB scheme pension, which would've escalated in the intervening period, would've met his income needs.

And the DB scheme benefits, regardless of which point they started, were guaranteed for life. Whereas the amount he could take under a flexible personal pension was entirely dependent on the sum remaining in the plan.

GPS has said that it was not certain that Mr H would continue to make contributions to his new pension arrangement or that he'd remain with the same employer. But I think it is reasonable to assume that Mr H would continue to contribute towards his pension provisions until retirement – either with his current employer or with a new employer. The consultancy has also referred to the contributions to the defined contribution pension scheme representing the cost to Mr H of keeping his DB scheme. But I don't agree with this. Continuing contributions were to an entirely separate pension and were to provide further retirement provisions.

Lastly, in terms of maximising TFC, as I've already said I don't think, based on the information that I've seen, this was a genuine objective for Mr H. The fact find said that Mr H did not have or anticipate a specific need for a lump sum at retirement. And there was nothing in the information about his finances that to me suggests otherwise.

Taking all of this into account, given the time until he was intending to retire, I don't think Mr H's plans or needs were known and certainly were not finalised. So, I don't think he had a need for flexibility at the time of the advice. Nor do I think this was the only option for meeting the objectives he may've been considering at the time. So, I don't think it was a suitable recommendation for Mr H to give up his guaranteed benefits, which was an irreversible decision, when he did.

Death benefits

GPS says Mr H was interested in the alternative death benefits provided by a personal pension. Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think GPS sufficiently explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H was married with children. I understand he was separated from his partner at the time. But I also note the fact find suggested he still wanted his wife to benefit from any death benefits. So, the spouse's and dependent's pension provided by the DB scheme would've been useful to his spouse and dependents if Mr H predeceased them. These were guaranteed and they escalated – they were not dependent on investment performance, or how much of the pension sum remained after accounting for income taken by Mr H. Whereas the sum remaining on death in a personal pension was dependent on these things. And based on Mr H being recorded as being in good health, the income he drew could've resulted in the fund being significantly depleted, particularly if he lived a long life. In any event, GPS should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I understand Mr H also had death in service benefits from his employer, which I think appear to have been a more appropriate method by which to leave a legacy. The new defined contribution pension he was contributing to also provided alternative forms of death benefit to his DB scheme. And, if Mr H didn't think these were enough and genuinely wanted to leave a further legacy, which didn't depend on investment returns or how much of his pension fund remained on his death, I think GPS should've instead explored life insurance – which given his age and apparent good health appear likely to have been obtainable at a reasonable price. But I can't see that GPS did so.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H.

Control and concerns over financial stability of the DB scheme

GPS says Mr H wanted control of his pension and was concerned about the status of the BSPS2 – saying there had been further rumours about this.

But Mr H hadn't transferred his benefits away during the "time to choose" exercise, when concerns about his pension and his employers handling of this were at their peak. He has said that he did look into transferring in 2017. But ultimately this didn't go ahead. I think it is unlikely that Mr H's concerns about the stability of the BSPS2 were greater than during the consultation, when he hadn't transferred his benefits. And even if he had been concerned about the BSPS2's ongoing stability, I'd have expected GPS to have taken steps to understand these concerns further and address them. But I can't see that it took any steps to do so.

I also think Mr H's desire for control over his pension benefits was overstated. Mr H was not an experienced investor. While he is recorded as having told GPS he had gotten used to reviewing his defined contribution scheme since it was implemented, I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr H – it was simply a consequence of transferring away from his DB scheme.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But GPS wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was very likely to obtain lower retirement benefits and in my view, for the reasons I've explained, there were no other particular reasons which would justify a transfer and outweigh this.

So, I think GPS should've advised Mr H to remain in his DB scheme (the BSPS2).

Of course, I have to consider whether Mr H would've gone ahead anyway, against GPS' advice. I've considered this carefully, but I'm not persuaded that Mr H would've insisted on transferring out of the DB scheme, if GPS had advised him not to. Mr H has said he relied on the advice given and would've been led by it. And I'm inclined to agree. I say this because Mr H was an inexperienced investor. At best he had a 'medium' attitude to risk – although the information suggests he may've in fact considered himself more 'cautious'. And although he was contributing to a new pension arrangement, this pension accounted for the majority of Mr H's retirement provisions at the time of the advice. So, if GPS, a professional adviser who he'd been referred to for advice, had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think that would've carried significant weight and that he would've accepted that advice.

In light of the above, I think GPS should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for GPS' unsuitable advice. I consider Mr H would have most likely remained in his DB scheme (the BSPS2) if suitable advice had been given.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr H whether he preferred any redress to be calculated now in line with current guidance or to wait for the new guidance / rules to come into effect. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr H.

GPS should therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, Mr H has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of the decision.

GPS may wish to contact the Department for Work and Pensions (DWP) to obtain Mr H's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr H's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr H's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr H within 90 days of the date GPS receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes GPS to pay Mr H.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90-day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90-day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect GPS to carry out a calculation in line with the updated rules and / or guidance in any event.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Grove Pension Solutions Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Grove Pension Solutions Limited to pay Mr H any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Grove Pension Solutions Limited to pay Mr H any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Grove Pension Solutions Limited pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts this decision, the money award becomes binding on Grove Pension Solutions Limited.

My recommendation would not be binding. Further, it’s unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 24 February 2023.

Ben Stoker
Ombudsman